



## Legislation Text

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**File #:** Res 0267-2010, **Version:** \*

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### Preconsidered Res. No. 267

Resolution in support of pending legislation in the New York State Legislature, which would amend the Penal Law by creating the crimes of criminal obstruction of breathing or blood circulation and strangulation in the first and second degrees.

By Council Members Ferreras, Vallone, the Speaker (Council Member Quinn) and Council Members Garodnick, Rodriguez, Chin, Comrie, Dromm, Gentile, Jackson, Koppell, Lander, Reyna, Sanders Jr., Van Bramer and Williams

Whereas, Domestic violence is a serious problem in New York City; and

Whereas, In fact, in 2009, the NYPD responded to 250,349 domestic violence incidents, an average of over 650 incidents per day; and

Whereas, Domestic violence can manifest itself in a number of ways; and

Whereas, Domestic violence batterers, for instance, may strike, kick, shove, or strangle their victims in order to assert their control and power; and

Whereas, Strangulation is a form of asphyxia and occurs when external pressure is applied to the neck causing closure of the blood vessels and/or air passages of the neck; and

Whereas, According to the U.S. Department of Justice's Institute of Justice, up to 68 percent of victims of domestic violence report being strangled at least once by their partner; and

Whereas, Despite the prevalence of intentional strangulation, which is considered by many to be more dangerous than punching, shoving and other kinds of abuse, the New York Penal Law does not classify strangulation as a separate crime; and

Whereas, Prosecutors often have trouble finding an appropriate Penal Law charge in strangulation cases because the conduct is intentional, and thus not considered reckless endangerment, yet does not cause physical

injury in the manner required to make out an assault charge; and

Whereas, Under the current law, it is therefore likely that a batterer will only be charged with harassment in the second degree; and

Whereas, Harassment in the second degree is only a violation, and it is therefore likely under current law that intentional strangulation will be punished by no more than up to 15 days in jail and a fine of up to \$250; and

Whereas, Close to half the states in the country have laws specifically addressing intentional strangulation in order to close this loophole and offer tougher penalties for this conduct; and

Whereas, Senator Eric Schneiderman and Assemblyman Joe Lentol are the sponsors of S.6987-A and A.10161-A, respectively, which would amend the Penal Law by creating the crimes of criminal obstruction of breathing or blood circulation and strangulation in the first and second degrees; and

Whereas, These bills would create the crime of criminal obstruction of breathing or blood circulation, a class A misdemeanor, which would occur when a batterer intentionally impedes normal breathing or blood circulation by suffocating or strangling a victim; and

Whereas, The bills would further create the crime of strangulation in the second degree, a class D felony, which would occur when a batterer commits the crime of criminal obstruction of breathing or blood circulation, which causes the victim to suffer either stupor, loss of consciousness for any period of time, or any other physical injury or impairment; and

Whereas, Strangulation in the first degree, a class C felony, would also be created by these bills, and would occur when a batterer commits the crime of criminal obstruction of breathing or blood circulation, which causes serious physical injury to a victim; and

Whereas, S.6987-A and A.10161-A would safeguard individuals who need to compress an airway for health reasons by creating an affirmative defense that would exclude conduct performed for valid medical or dental purposes from criminal liability; and

Whereas, The New York State Legislature should pass these bills in order to close the strangulation loophole and hold batterers accountable for the harm they inflict on their victims; and

Whereas, Many batterers who cause victims significant injury escape punishment due to the present loophole in the law; now, therefore, be it

Resolved, That the Council of the City of New York supports pending legislation in the New York State Legislature, which would amend the Penal Law by creating the crimes of criminal obstruction of breathing or blood circulation and strangulation in the first and second degrees.

SA  
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